

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of CHANTEL ANNETTE  
LOONEY, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GARY LOONEY,

Respondent-Appellant,

and

KENNETH LAMBUTH, ANTHONY WHITE, and  
BRIDGET LOONEY,

Respondents.

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Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(h). We affirm. This case is being decided without oral argument under MCR 7.214(E).

Respondent-appellant first claims that the trial court erred in not appointing an attorney for him until just before the termination hearing. However, respondent-appellant did not raise this issue in the trial court nor has he provided necessary transcripts to review his claim. *Thompson v Thompson*, 261 Mich App 353, 359 n 1; 683 NW2d 250 (2004); *Nye v Gable, Nelson & Murphy*, 169 Mich App 411, 414; 425 NW2d 797 (1988). Nevertheless, our review of the record indicates that respondent-appellant was advised of his right to an attorney well in advance of the termination hearing but chose not to exercise that right until the eve of trial. When the right was finally exercised the trial court fulfilled its obligation under MCR 3.915(B).

Moreover, the trial court did not commit clear error in finding that the statutory basis for termination had been established by clear and convincing evidence despite respondent-appellant's acquiescence to the court's authority to terminate his parental rights under subsection

19b(3)(h). As a result of his incarceration respondent-appellant has failed to provide proper care or custody of the minor child since 2003 and there was no reasonable likelihood that he would be able to do so within a reasonable time given the age of the child.

Affirmed.

/s/ Alton T. Davis  
/s/ Joel P. Hoekstra  
/s/ Pat M. Donofrio